

EXHIBIT 16

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9 TERRANCE QUINN

ORIGINAL FILED

APR 21 2005

**LOS ANGELES
SUPERIOR COURT**

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

13 JAMES HARKESS,

14 Plaintiff,

15 v.

16 TERRANCE QUINN, WINDSOR TRUST,
17 u/d/t dated June 21, 2002, and DOES 1-10,
18 inclusive,

19 Defendants.

) Case No. BC311681

) **POST TRIAL BRIEF**

) [Assigned for All Purposes to Dept. 26,
Hon. Hon. James R. Dunn]

) Trial Date: March 28, 2005

) Time: 9:00a.m.

) Location: 111 N. Hill St., Dept. 26

20 **AND RELATED CROSS-ACTION.**

21 **INTRODUCTION**

22 Plaintiff James R. Harkess brought this declaratory relief action to determine the
23 ownership of Windsor Holdings LLC, a California limited liability company formed by
24 defendant Terrance Quinn in July 2001. Defendant Terrance Quinn and defendants James
25 H. Smith and Jeffrey Weinsten, as trustees of the Windsor Trust u/d/t dated June 24, 2002,
26 contend that Mr. Quinn irrevocably assigned his economic and ownership interest in
27 Windsor Holdings LLC to the Windsor Trust in June 2002 and that the Windsor Trust is
28 the sole member of Windsor Holdings LLC. Plaintiff Harkess contends that he became the
sole member of Windsor Holdings LLC in mid-July 2003 with the assistance of David
Kaye and Peter Babos, Mr. Quinn's attorney.

1 Based upon testimony and document evidence presented at trial and for the reasons
2 set forth herein, the sole membership of Windsor Holdings LLC is vested in James H.
3 Smith and Jeffrey Weinsten, as trustees of the Windsor Trust u/d/t dated June 24, 2002.

4 5 FORMATION OF WINDSOR HOLDINGS, LLC

6 Windsor Holdings LLC was established as part of a corporate restructuring of Mr.
7 Quinn's 1999 acquisition of Sanitec, Ltd. Exh. 21. Following the reorganization
8 performed by New Jersey law firm Lowenstein Sandler, Windsor Holdings LLC was to
9 hold the shares of Sanitec Worldwide, Ltd., which in turn owned Sanitec Ltd., a
10 manufacturing company and owner of the Sanitec* trademark and patents.

11 Windsor Holdings LLC came into existence on July 17, 2001 when Mr. Quinn's
12 attorney filed articles of organization with the Secretary of State pursuant to Corp. Code §
13 17050(c). Exh. 223. The undisputed evidence shows that Windsor Holdings LLC was
14 organized by attorney Mitchell R. Miller, Esq. at the request of his client, Terrance Quinn,
15 and that Mr. Quinn paid for the organization of Windsor Holdings LLC. Exh. 408.

16 A "limited liability company" or "domestic limited liability company" is an entity
17 with one or more members organized under the Beverly-Killea Limited Liability Company
18 Act. Corp. Code § 17001(t); Corp. Code § 17101. A limited liability company may
19 conduct business, sue and be sued, and exercise all the powers of a natural person, in its
20 own name. See Corp. Code § 17003.

21 An LLC has two basic organizational documents. The first is the "articles of
22 organization," a one-page statutory form, which must be filed with the Secretary of State.
23 Corp. Code § 17050(c). The second is the "operating agreement," which may be any
24 agreement, written or oral, among the member(s) as to the affairs of the LLC and the
25 conduct of its business. Corp. Code § 17001(ab) The operating agreement may be as
26 simple as an agreement or intent to organize an LLC.

27 An LLC must have at least one member (Corp. Code § 17050(b)) and members may
28 be natural persons, partnerships, limited partnerships, trusts, estates, associations,

1 corporations, other LLCs, or other types of entities, whether domestic or foreign. Corp.
2 Code § 17001(x). (ae).

3 On formation of an LLC, its member(s) is the persons, or person, who enter into its
4 operating agreement before or after filing of its articles of organization. Corp. Code §
5 17050(a). After an LLC is formed, a person may become a member only by acquiring a
6 membership interest from the LLC in conformity with its articles of organization or
7 operating agreement or, if those documents do not otherwise provide, by vote of a majority
8 in interest of the members. – excluding the vote of the person acquiring the membership
9 interest. – and only on becoming a party to the operating agreement. Corp. Code §
10 17100(a)(1).

11 A “membership interest” refers to a member's rights in the limited liability company,
12 collectively, including the member's economic interest, any right to vote or participate in
13 management, and any right to information concerning the business and affairs of the
14 limited liability company. Corp. Code § 17001(z).

15 An LLC may be managed either by all of its members or by one or more managers.
16 Corp. Code §§ 17150, 17151. The managers may be or include some of the members
17 (Corp. Code § 17151(a)) and do not need to be natural persons. Corp. Code § 17151(c).
18 The LLC's business and affairs are to be managed by all of its members unless the articles
19 of organization state that an LLC will be managed by one or more managers. Corp. Code §
20 17151(b). In this case, the articles of organization does state that management of Windsor
21 Holdings LLC is vested in only “one manager,” who does not need to be a member under
22 Corp. Code § 17151(c). See Exhibit 223, ¶ 5.

23 As of its formation on July 17, 2001, Mr. Quinn was the sole person entitled to an
24 economic interest in Windsor Holdings LLC and the sole person who could enter into an
25 operating agreement. – written or oral, – and was, therefore, its owner and sole member.

26 Shortly after Windsor Holdings LLC came into existence, Mr. Quinn, as the sole
27 director of Sanitec Worldwide, Ltd., authorized the issuance of Sanitec Worldwide, Ltd.
28 shares to Windsor Holding LLC. As a result of the corporate restructuring, Sanitec

1 Worldwide, Ltd. was the sole shareholder of Sanitec, Ltd., the company Mr. Quinn had
2 acquired in 1999. On or about July 27, 2001, Jeffery Weinsten and Joe Delloiacovo
3 executed share Certificate No. 3 to complete the issuance of Sanitec Worldwide, Ltd.
4 shares to Windsor Holdings LLC. Exh. 78. 408.

5 As of August 2001, Mr. Quinn was the sole owner or member of Windsor Holdings
6 LLC, which owned Sanitec Worldwide Ltd., which in turn owned Sanitec Ltd. (See, Exh.
7 21, 22 for complete history.) Mr. Quinn, who was undergoing medical treatment for
8 cancer and other health problems and was facing Federal indictment, was looking for
9 someone to act as manager and facilitate the sale of Sanitec, Ltd. to a third party.

10 11 DAVID KAYE AS MANAGER

12 David Kaye is the principal of Strategic Financial Advisors and was retained by
13 Terrance Quinn to raise capital for the development of ABB Sanitec West, Inc. ("Sanitec
14 West") through private investment offerings. Mr. Kaye testified that Mr. Quinn was his
15 client and that he was Mr. Quinn's fiduciary.

16 It is not disputed that after the formation of Windsor Holdings LLC and following a
17 meeting with Mark J. Richardson, Esq., Mr. Kaye's securities lawyer, Mr. Quinn asked Mr.
18 Kaye to serve as manager of Windsor Holdings LLC and to represent himself as the
19 managing member in the potential sale of Sanitec Ltd. to Eden Environmental LLC.
20 (Quinn and Kaye Testimony)

21 On October 12, 2001, Mr. Kaye and Mr. Quinn memorialized their arrangement in a
22 hand-written memorandum. Exh. 217. The substance of the memorandum is that Mr.
23 David Kaye would execute the term sheet for Eden Environmental LLC's acquisition of
24 Sanitec, Ltd. as "managing member" of Windsor Holdings, LLC, if Mr. Quinn and the
25 Windsor Holdings LLC agreed to fully indemnify Mr. Kaye for representing himself as the
26 managing member.

27 Since the Windsor Holdings LLC articles of organization state that management is
28 vested in only "one manager." (Exh. 223, ¶ 5), David Kaye could serve as the one manager

1 without being a member. See Corp. Code § 17151(c). This would be akin to a
2 corporation hiring a president or CEO who was not a shareholder. David Kaye's testimony
3 and the memorandum made it clear that Mr. Kaye was operating as a consultant to and
4 under the direction of Mr. Quinn and did not have any independent managing authority or
5 ownership interest. (Kaye Testimony p. 15-16) In addition to Mr. Kaye's testimony
6 regarding his being Mr. Quinn's fiduciary, an LLC manager owes the same fiduciary duties
7 to an LLC and to its members that a partner owes to a partnership and to the other partners.
8 Corp. Code § 17153; see Corp. Code § 16404 (describing partners' fiduciary duties).

9 David Kaye's actions as manager was limited to negotiation of the sale of Sanitec,
10 Ltd. to Eden Environmental LLC and the execution of several documents as managing
11 member. Exhs. 216, 458, 220. There is no evidence that David Kaye acted as manager or
12 managing member of Windsor Holdings LLC after January 2002. Since Windsor Holdings
13 LLC is merely a holding company for the shares of Sanitec Worldwide Ltd., the need for
14 action by a manager is somewhat limited. Mr. Kaye's more significant roles were that of
15 president and chairman of Sanitec, Ltd. and the raising of private capital for Sanitec West
16 through his company Strategic Financial Advisors.

17 Mr. Kaye's compensation for his work on the Eden Environmental LLC transaction
18 was 1% of \$9 Million sale price if the transaction was successful. Exh. 217, p. 2. This
19 compensation was in addition to substantial fees paid to Strategic Financial Advisors for
20 raising private capital for Sanitec West.

21 The arrangement did not grant Mr. Kaye any ownership or membership interest in
22 Windsor Holdings, LLC. Mr. Kaye's handwritten memorandum contradicts any claim that
23 Mr. Kaye acquired a membership interest in Windsor Holdings LLC or was, in fact, a
24 bonafide managing member.

25 No evidence was presented that David Kaye became a member of Windsor Holdings
26 LLC under the required procedures of Corp. Code § 17100(a)(1). Mr. Kaye was never a
27 party to any operating agreement with Mr. Quinn, oral or written, and did not agree to act
28 as manager until after Windsor Holdings LLC was formed. David Kaye never purchased,

1 subscribed to, or sought to acquire a membership interest in Windsor Holdings LLC. No
2 evidence was presented that Mr. Quinn ever intended to transfer his ownership of Windsor
3 Holdings LLC to Mr. Kaye. Mr. Kaye's only claim under the arrangement was for
4 indemnity and a 1% fee if the transaction was successful. Exh. 217. Even if he did acquire
5 some claim or right to an economic interest in Windsor Holdings LLC, David Kaye only
6 held any such claim or right as a fiduciary for the benefit of his client Terrance Quinn.

7 As of early May 2002, Sanitec Ltd. and Sanitec West were in Federal litigation
8 against Joe Delloiacovo and others for their theft of Sanitec, Ltd.'s intellectual property
9 and other torts (Exh. 114), and the sale to Eden Environmental LLC had fallen through due
10 to the litigation. Facing very uncertain health and a certain prison term, Mr. Quinn needed
11 to take steps to put some of his affairs in order.

12 THE WINDSOR TRUST

13 In May 2002, Mr. Quinn turned to his friend James H. Smith, an experienced
14 businessman, and associate Jeffrey Weinsten, who had a significant history with Sanitec,
15 Ltd., and asked them to serve as trustees of an irrevocable trust. The sole asset of the
16 Windsor Trust was to be Mr. Quinn's economic interest and ownership of Windsor
17 Holdings LLC. Exh. 261, 262.

18 On May 13, 2002, Mr. Quinn wrote to Mr. Kaye and advised him that he was
19 creating a trust for his 100% ownership of Windsor Holdings LLC and notifying Mr. Kaye
20 that Mr. Kaye would no longer have any role with regard to Windsor Holdings LLC. Exh.
21 221. Mr. Kaye would continue as president and chairman of Sanitec, Ltd. and continue his
22 efforts to raise private capital for Sanitec West. By that time, the potential sale to Eden
23 Environmental LLC has fallen through and Windsor Holdings LLC was merely a holding
24 company for the shares of Sanitec Worldwide Ltd. which owned Sanitec Ltd. No evidence
25 was presented that Mr. Quinn had directed David Kaye to take any action as manager or
26 managing member of Windsor Holdings LLC since early January 2002.

27 With the assistance of New Jersey attorney Gerald Litwin and Jeffrey Weinsten, Mr.
28

1 Quinn created the Windsor Trust u/d/t dated June 24, 2002, assigning "100% of the
2 shares/ownership interest in Windsor Holdings LLC. Exh. 262.

3 Any contention that the Windsor Trust is invalid, or was created at some later date,
4 is directly contradicted by the correspondence among Mr. Weinstein, Mr. Litwin, and Mr.
5 Quinn (Exhs. 265-268) and the testimony of Mr. Quinn, Mr. Weinstein, Mr. Smith, Mr.
6 Peter Babos, and Mr. Miller (regarding validity of the trust), as well as the obvious
7 necessity that Mr. Quinn make such arrangements before surrendering to Federal custody
8 in the Summer of 2002.

9 As of July 2002, Mr. Quinn's interest in Windsor Holdings LLC (and thereby
10 Sanitec Worldwide Ltd. and Sanitec, Ltd) had been assigned to the Windsor Trust. David
11 Kaye continued to serve as officer and director of Sanitec, Ltd., which had no daily
12 business operations due to the litigation and continued to raise private capital for Sanitec
13 West. Dr. Mary Riedinger, Mr. Quinn's long-time "significant other", held their 80%
14 interest in Sanitec West, which managed by James R. Harkess. On August 19, 2002, Mr.
15 Quinn began serving his Federal sentence at a medical facility in Ft. Worth, Texas.

16 It was Mr. Quinn's hope and expectation that once the Sanitec litigation was
17 resolved, Mr. Smith and Mr. Weinstein would be able to successfully develop Sanitec, Ltd.
18 and sell the company to pay off Mr. Quinn's creditors, including the so-called "note-
19 holders" in Ohio.

20 Under the circumstances of the pending Sanitec litigation, it was appropriate for the
21 Windsor Trust trustees to monitor the litigation and settlement talks as they did and, if
22 necessary, take action through a vote of the LLC's shares of Sanitec Worldwide, Ltd.,
23 which in turn controlled Sanitec, Ltd. From late January 2003 until July 7, 2003, the
24 trustees monitored the process of the settlement proposals until it became apparent that the
25 attorneys purporting to represent Sanitec Ltd.'s interest were contemplating settlement
26 scenarios that would result in the transfer of Sanitec, Ltd.'s assets and intellectual property
27 to Mr. Harkess and result in Sanitec Ltd.'s bankruptcy and dissolution.

28 In June 2003, the trustees conducted the necessary corporate meetings, minutes, and

1 resolutions to install new officers and directors of Sanitec Ltd. and to assert their control
2 over Sanitec, Ltd.

3 On July 7, 2003, James H. Smith wrote to Ohio litigation counsel John R. Climaco
4 to advise him that the Climaco firm was terminated from further representation of Sanitec,
5 Ltd. and advising Mr. Climaco that neither Mr. Kaye nor Mr. Harkess had any authority to
6 act on behalf of Sanitec, Ltd. Exh. 210.

7
8 OHIO COUNSEL'S DEMAND FOR DOCUMENTATION

9 On Monday July 7, 2003, Peter Babos, John Climaco, David Kaye and James R.
10 Harkess received copies of James H. Smith's termination to letter. Exh. 201.

11 On Wednesday July 9, 2003, Peter Babos replied to Mr. Smith with a cease and
12 desist letter disputing Mr. Smith's claims to the control Sanitec, Ltd. Exh. 169.

13 On Tuesday morning, July 15, 2003, John R. Climaco send an email to Peter Babos,
14 David Kaye and James R. Harkess asking "WHO DO I REPRESENT AND WHO DO I
15 LISTEN TO?????" Exh. 211.1

16 On Thursday morning, July 17, 2003, Mr. Climaco demanded that Peter Babos, Mr.
17 Kaye and Mr. Harkess send documentation by 9:00 a.m. the next morning showing that
18 they had authority to act on behalf of Sanitec, Ltd. Exh. 212

19 Thursday evening at 9:32 p.m., Peter Babos transmitted by facsimile the documents
20 that had been created for Mr. Climaco showing that Windsor Holdings LLC was owned
21 100% by James R. Harkess.

22 The next morning, July 18, 2003, there was a conference call to discuss the
23 documents so that Mr. Climaco could make truthful representations to Judge Nugent on
24 Monday morning, July 21, 2003. Exh. 212.

25 The only reason James R. Harkess can make any claim to Windsor Holdings LLC
26 was because he, David Kaye and Peter Babos participated in a ruse to satisfy their litigation
27 attorney in Ohio and because no one could reach Mr. Quinn in Ft. Worth, Texas. Although
28 the cross-complaint alleges fraud, it is not known whether Mr. Harkess intended to take

1 Windsor Holdings LLC for himself at that particular time. Mr. Harkess testified that he put
2 the certificates in a drawer, and that he did not think them significant. The only purpose of
3 the documents was to satisfy Mr. Climaco's demand to provide documents by Friday
4 morning, July 18, 2003.

5 Mr. Kaye testified that before the false documents were prepared, Mr. Harkess told
6 him that he and Mr. Quinn had an arrangement, and that he would take the shares for Mr.
7 Quinn and settle the issue later when Mr. Quinn returned from prison. Mr. Harkess later
8 wrote an email to Mr. Babos where he affirmatively referenced settling the issue with Terry
9 at some point later – "Until the issue gets resolved with Terry." Exh. 176, 177. Mr. Babos
10 testified that both Mr. Kaye and Mr. Harkess told him that the documents were in Mr.
11 Quinn's best interest, that they would undo the transaction when Mr. Quinn got home, but
12 for reasons critical at that time, they needed to appease Mr. Climaco. At some point,
13 however, it became clear the Mr. Harkess had decided that he no longer was representing
14 Mr. Quinn's interest and claimed Windsor Holdings LLC for himself. Mr. Babos
15 attempted to undue the transaction and get the parties to talk, but to no avail.

16 In January 29, 2004, Mr. Harkess made false representations to Judge Nugent
17 concerning the documents that had been prepared on or about July 17, 2003. Exh. 444,
18 Harkess testimony.

19 QUINN RETURNS

20 In September of 2003, Mr. Quinn was release from Ft. Worth facility and contacted
21 Mitchell R. Miller again to complete any work that had been interrupted. Mr. Miller
22 testified that the trust was a valid irrevocable trust with no protection from creditors and
23 that the membership of Windsor Holdings LLC is vested in James H. Smith and Jeffrey
24 Weinsten, as trustees of the Windsor Trust u/d/t dated June 24, 2002.

25 NO ACTUAL OR OSTENSIBLE AUTHORITY

26 Any claim by Mr. Harkess that he relied on the authority of Mr. Kaye and Mr.
27 Babos' (Mr. Quinn's attorney) to give him the LLC is directly contradicted by his own
28

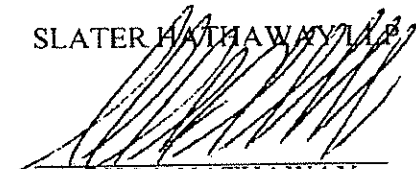
1 statements to Mr. Kaye and Mr. Babos that he was accepting the certificate on behalf of
2 Mr. Quinn and would settle with Mr. Quinn later. (Babos and Kaye Testimony) Neither
3 Mr. Kaye nor Mr. Babos had any membership interest of their own to give to Mr. Harkess
4 in July, 2003. Neither Mr. Kaye nor Mr. Babos have any authority as Mr. Quinn's
5 fiduciaries to give Mr. Quinn's interests and rights away. Because Harkess participated in
6 the deceit himself, he cannot satisfy Civil Code § 2334. Harkess testified that he did not
7 pay a penny for the stock, and he has suffered no detriment. Any claim as to this is false as
8 it was Sanitec Industries, Inc. (not Harkess individually) that might be able to claim it
9 incurred liability by virtue of its separate settlement agreement entered into with some of
10 the Ohio note-holders.

11 12 CONCLUSION

13 Plaintiff has failed to prove that Defendant Quinn is guilty of unclean hands as set
14 forth in his opening statement. There was no dispute that the funds used to acquire
15 Sanitec, Ltd. are traceable and should be repaid to the individual note-holders in Ohio.
16 Plaintiff further failed to prove that the Trust was an invalid instrument created by Quinn in
17 good faith and with proper purpose. Finally, plaintiff has failed to prove that Kaye and/or
18 Babos had any actual or ostensible authority to transfer to him, for absolutely no
19 consideration whatsoever, the entire ownership of Windsor Holdings. Such an act would
20 be well beyond anything imagined or intended by Quinn, or risked by his attorney, Babos
21 under any conceivable notion. Ownership of Windsor Holdings, LLC should be decided in
22 favor of Quinn's trust.

23
24 Dated: March 22, 2005

SLATER HATHAWAY LLP

25
26 
27 MARK M. HATHAWAY

Attorneys for WINDSOR TRUST and TERRANCE QUINN
28

SANITEC

Sanitec, Ltd.

March 1985 - Est. as Combustion Engineering Plant Mgmt Systems, Inc.
 March 1988 - Name Change to Environmental Projects, Inc.
 Sept. 1990 - Name Change to ABB Sanitec, Inc. by Asea Brown Boveri
 Dec 1993 - Obtains U.S. Patent 5,270,000, Apparatus for treating medical hazardous wastes
 April 1995 - Acquired by HS Holdings (NJ), Name Change to Sanitec, Inc.
 June 1996 - Obtains U.S. Patent 5,529,687, Filling sluice for appliances for the treatment of infectious waste
 Aug 1996 - Obtains U.S. Trademark 1,991,211 for "Sanitec, Inc."
 April 1999 - Obtains U.S. Trademark 2,238,405 for Sanitec®
 Feb 1999 - Acquired by SICC (NJ) [Quinn] using some funds loaned to Quinn by Venture companies. [Steven Vente, Quinn's cousin].
 April 2001 - Corporate reorganization - Sanitec Inc. merges with Sanitec Int'l Holdings (NV) and Standard Industrial Consulting Corp (DE), Standard Industrial Consulting Corp (NJ) by NJ law firm.
 April 2001 - Change Name to Sanitec, Ltd.

Sole shareholder of Sanitec Ltd. is Sanitec Worldwide, Ltd. (DE) which is in turn owned by Windsor Holdings LLC (102 shares) [Windsor Trust] and Salem Associates, Inc. (DE) (98 shares) [Weinstein]

Sanitec, Ltd Distributors

- Sanitec West (CA,OR,WA) [Harkess]
- Narita Trading (Taiwan)
- Steryl Medi Equip (India)
- SheGoTec, Inc. (Japan)
- Fkepeco/Bassi (Kuwait)
- Sanitec of Kentucky [Guardian Investments/Ventre companies] sold to Stericycle circa 2002

In April 2002, Sanitec Ltd. and Sanitec West sue Delloiaco, Sanitec Group LLC, et al. The competing claims and counter claims are pending before the Hon. Donald C. Nugent, U.S. District Judge in the Northern District of Ohio, *Sanitec West et al v. Delloiaco et al.* USDC Case No. 1:02-cv-01582-DCN. Case is stayed pending resolution of California issue of ownership of Windsor Holdings LLC and who, therefore, represents the interests of Sanitec Ltd. -- Jim Harkess or James Smith and Jeffrey Weinstein.

Sanitec Group, LLC

Formed February 20, 2002 by Joe Delloiaco, while he was an officer and director of SANITEC, LTD, and without its consent or knowledge. Delloiaco resigned from Sanitec, Ltd on March 21, 2002 and began operating Sanitec Group, LLC, claiming that it now owned all of Sanitec, Ltd.'s assets and intellectual property.

Delloiaco placed derogatory information about Sanitec West on the Internet, which interfered with Sanitec West's private placement memorandum efforts. Sanitec Ltd. and Sanitec West sued Delloiaco et al., which is pending before Judge Nugent. Sanitec Group LLC is a subsidiary of Guardian Investments, LLC, a Steve Vente enterprise, which claim rights to Sanitec Ltd's assets by virtue of money loaned to Quinn by Vente.

Sanitec Industries, Inc.

California corporation formed by James Harkess on February 19, 2003, while an officer and director of Sanitec West [ABB Sanitec West, Inc.] Harkess now claims Sanitec Industries Inc holds all Sanitec, Ltd.'s intellectual assets, based on an assignment from Sanitec Group, LLC. At the same time, Harkess is claiming to represent the interests of Sanitec Ltd., in the litigation in Ohio against Sanitec Group, LLC, hence the dispute.

Sanitec USA, Inc.

California corporation formed by James Harkess on January 2, 2004, while he was a director and officer Sanitec West. Harkess now claims Sanitec USA, operates the business that used to belong to Sanitec West. Those issues are pending in *Riedinger v. Harkess, et al.* Case No. BC322202 (involving claims against Harkess for diluting the majority stock ownership of ABB Sanitec West, Inc.)

SANITEC TIMELINE

1. 2/99 HS Holdings, owner of Sanitec, sold to SICC (NJ)
2. 3/99 SICC (NJ) issues only stock certificate to SIH (NV)
3. 2/99 SIH (NV) issues stock certificate to T. Quinn making Quinn the sole owner of Sanitec, Inc.
4. 4/01 Reorganization of Sanitec companies by Lowenstein Sandler at the direction and control of TQ.
5. 4/01 Companies merged into Sanitec, Inc. which changed its name to Sanitec, Ltd.
6. 4/01 Sanitec, Ltd. issues shares only to Sanitec Worldwide.
7. 7/17/01 Quinn forms Windsor Holdings through attorney Mitch Miller.
8. 7/29/01 Sanitec Worldwide issues only shares to Windsor Holdings, T. Quinn retaining full control and ownership.
9. 7-8/01 Quinn asks Kaye if he would be manager of Windsor Holdings upon a possible sale of Sanitec, Ltd.
10. 10/12/01 Kaye writes Quinn a memo. Says he understands Quinn is the "actual controlling shareholder of Windsor" and agrees to execute the Eden term sheet as Managing Member of Windsor "as an accommodation" to Quinn if Quinn would indemnify him from "any liabilities that may arise due to my representing myself as the managing member..."
11. 10/31/02 Kaye signs term sheet as managing member of Windsor.
12. 1/03/02 Kaye signs corporate resolution as Managing Member.
13. 5/13/02 Quinn sends Kaye a letter terminating him from any role he might have had as managing member.
14. 6/24/02 Windsor Trust created and Quinn transfers in 100% of his ownership interest in Windsor Holdings.
15. 7/7/03 Smith writes termination letter to Climaco because his proposed settlement will take all assets from Sanitec, cheating Sanitec Ltd. creditors and shareholders.
16. 7/14-7/15/03 Climaco demands Babos, Kaye and Harkess present documentary evidence as to who owns and controls Sanitec Ltd. And Windsor Holdings.

17. 7/15- Babos, Kaye and Harkess fabricate documents creating the
7/17 appearance that Kaye was the member and manager of Windsor
and had transferred total ownership of Windsor to Harkess back
on November 21, 2002.
18. 9/03 Terry Quinn returns home. Discovers false documentation
contrary to his intentions via the Windsor Trust.
19. 12/03- Babos attempts to get all parties to correct mistakes and resolve
1/04 other issues. His attempts are ignored by Harkess, Kaye, et al.
20. 5/04 Quinn advises Mitch Miller, the original attorney and organizer
for Windsor Holdings, to finalize ownership and control of
the company in the name of the Windsor Trust.

1 } PROOF OF SERVICE

2 STATE OF CALIFORNIA }
3 COUNTY OF LOS ANGELES } ss.

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 200 South Los Robles Avenue, Ste 530, Pasadena, California 91101-2432.

5 On April 21, 2005 the foregoing document, described as POST TRIAL BRIEF on all interested parties listed below by transmitting to all interested parties a true copy thereof as follows:

6
7 Michael J. Hartley
8 Weston Benshoof et al LLP
9 333 S. Hope Street 16FL
10 Los Angeles, CA 90071-1406

11 ☐ BY FACSIMILE TRANSMISSION from FAX No. (626) 795-1616 to the fax numbers set forth above.

12 ☐ The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2005(i), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

13 ☐ BY EXPRESS SERVICE: I caused such document to be deposited in a box or other facility regularly maintained by the express service carrier or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person on whom it is to be served.

14 ☒ BY MAIL as follows:

15 ☐ placing a true copy thereof in a sealed envelope addressed as stated on the ATTACHED MAILING LIST.

16 ☒ placing ☐ the original ☒ a true copy thereof enclosed in a sealed envelope addressed as set forth above.

17 ☐ I deposited such envelope in the mail at Pasadena, California. The envelope was mailed with postage thereon fully prepaid.

18 ☒ I am 'readily familiar' with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Pasadena, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

19 ☐ BY PERSONAL SERVICE as follows: I delivered such envelope by hand to the offices of the addressee.

20 ☐ FEDERAL - I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

21 ☒ STATE - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

22 Executed on April 21, 2005 at Pasadena, California.

23 
24 Mark M. Hathaway
25
26
27
28

EXHIBIT 17

RUFF0406.TXT

22 STANDARD TRUST TO TRANSFER THE SHARES BACK TO -- TO
23 SANITEC WORLDWIDE, WHAT THE STANDARD TRUST WAS DOING
24 HERE WAS RELEASING ALL OF ITS RIGHTS AND CLAIMS FOR ALL
25 TIME, THAT IT MAY'VE HAD SEPARATE AND APART FROM THE
26 STOCK WHICH IT NEVER HAD IN THE FIRST PLACE.

27 Q. AND THAT'S WHAT YOU TESTIFIED TO IN
28 DEPOSITION IN DELAWARE?

□

HARKESS VS. QUINN ROUGH DRAFT ASCII (TRIAL 4/06/05) 155

1 A. I DON'T RECALL THAT.

2 THE COURT: LET'S MOVE ON TO SOMETHING ELSE.

3 MR. HARTLEY: OKAY.

4 BY MR. HARTLEY:

5 Q. UH LAST QUESTIONS, MR. QUINN?

6 A. MR. WEINSTEN.

7 Q. UH MR. WEINSTEN YOU HAVE -- YOU SAY YOU
8 HAVE A 49 PERCENT INTEREST IN WIND SOAR IN UH SANITEC
9 WORLDWIDE THROUGH YOUR THROUGH SALE AND ASSOCIATES?

10 A. I HAVE 98 SHARES ISSUED AND UH-H-H --
11 WINDSOR HOLDINGS HAS A HUNDRED AND 2 SHARES ISSUED.

12 Q. AND YOU OBTAINED THOSE SHARES FROM WIND OR
13 HOLDING I MEAN FROM SANITEC WORLD WIDE IN APPROXIMATELY
14 MAY OF 2 NOW AND 2?

15 A. THAT'S CORRECT.

16 Q. AND DURING THAT AND AT THE R THAT PERIOD OF
17 TIME THERE WAS LITIGATION PENDING THE DELLOICOVO
18 LITIGATION AND OTHER OTHER LITIGATIONS OVER THE ASSETS
19 OF SANITEC LIMITED?

20 A. THAT'S CORRECT.

21 Q. AND YOUR TESTIMONY IN IN DELAWARE WAS THAT
22 YOU PAID A NOMINAL CONSIDERATION FOR THOSE SHARES
23 CORRECT?

RUFF0406.TXT

24 A. THAT'S CORRECT.

25 MR. HARTLEY: NO FURTHER QUESTIONS, YOUR HONOR.

26 {NOTE: 2 NOW AND 1 IS 2,000 AND 1 THROUGHOUT. END
27 NOTE}.

28 MR. HATHAWAY: I'D LIKE TO SHOW WHAT I MARKED

HARKESS VS. QUINN ROUGH DRAFT ASCII (TRIAL 4/06/05) 156

1 TRUST EXHIBIT FOR IDENTIFICATION.

2 THE COURT: IS THIS THE TRUST OR --.

3 MR. HATHAWAY: THIS IS THE ALL UM LETTER THAT THE
4 WITNESS WROTE TO DANIEL DRIESBACH** AFTER HIS UM
5 DEPOSITION IN DELAWARE THAT CORRECTS THE RECORD {NOTE:
6 5 31. END NOTE}.

7 THE COURT: DID YOU SHOW THIS TO COUNSEL.

8 MR. HATHAWAY: I'LL SHOW IT TO COUNSEL.

9 MR. HARTLEY: YOUR HONOR WE'VE NEVER SEEN THIS.

10 THE COURT: DON'T SHOW IT TO ANYONE.

11 THE COURT: SHOW IT TO COUNSEL.

12 MR. HATHAWAY: I'VE SHOWN HAVE --

13 MR. HARTLEY: YOUR HONOR, I MOVE THAT THIS -- THIS
14 SHOULD NOT BE ADMITTED. THIS IS -- THIS IS -- STUFF
15 THAT'S CLEARLY BEEN REQUESTED -- DOCUMENT REQUESTED. IT
16 HAD ACTUALLY EXISTED AT THE TIME.

17 (SPOKE SIMULTANEOUSLY; UNINTELLIGIBLE.)

18 .

19 MR. HARTLEY: THERE'S NO INDICATION THAT THIS
20 HAS --

21 MR. HATHAWAY: I -- I WILL REPRESENT TO THE COURT
22 THAT THERE HAS BEEN AN UNDERSTANDING AND AGREEMENT, I
23 BELIEVE IN WRITING THAT THE PARTIES WERE NOT GONNA
24 REPRODUCE TO EACH OTHER DOCUMENTS THAT WERE CONTAINED OR
25 PART OF THE OTHER LITIGATIONS. THERE'S A DELAWARE

EXHIBIT 18

ORIGINAL FILED

JUL 11 2005

LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JAMES HARKESS,

Plaintiff,

v.

TERRENCE QUINN aka TERRANCE LEE
QUATKEMEYER, and DOES 1 through 10,
inclusive,

Defendants.

AND RELATED CROSS-ACTION.

Case No.: BC 311681

**TENTATIVE RULING
AND (PROPOSED)
STATEMENT OF DECISION**

The court finds FOR PLAINTIFF/CROSS-DEFENDANT AND AGAINST DEFENDANTS/CROSS-COMPLAINANTS on Plaintiff's Complaint for Declaratory Relief and on Defendants' Cross-Complaint for Declaratory Relief. The court declares that plaintiff James Harkess ("Harkess" herein) is the rightful owner of Windsor Holdings, LLC, ("Windsor" herein) and that defendants have no right, title or interest therein. Further, defendants, and each of them, are permanently enjoined from claiming any right, title or interest in Windsor.

The court finds that the Windsor Trust ("Trust" herein) was not legally in existence and had no assets at the time of the transfer of Windsor from David Kaye ("Kaye" herein) to Harkess.

1 Defendant Terrence Quinn aka Quatkemeyer ("Quinn" herein), through a series of companies and
2 transactions, none of which bear his name or other indicia of his ownership, transferred ownership
3 and apparent authority to Kaye as managing member of Windsor. Thereafter, back-dated documents
4 were created virtually overnight, transferring ownership of Windsor from Kaye to Harkess. This
5 transfer of ownership of Windsor was relied on not only by Harkess, but by many other parties and
6 attorneys, including a federal judge. The court finds that the transfer from Kaye to Harkess was
7 effective to transfer ownership of Windsor to Harkess. The court further finds that, in any event,
8 Quinn and those acting on his behalf are barred by the equitable doctrines of unclean hands and
9 equitable estoppel from asserting ownership in Windsor. Any purported ownership claimed by
10 James H. Smith ("Smith" herein) or Jeffrey Weinsten ("Weinsten" herein) is purely derivative based
11 on their status as trustees of Trust, and the court has found that the Trust was not legally in existence
12 during the time of the transfer from Kaye to Harkess.

13

14 FACTUAL BACKGROUND

15 There are many different companies and individuals involved in the various lawsuits here,
16 in Ohio and elsewhere, but the essential entities for purposes of this lawsuit are Windsor, Sanitec
17 Worldwide ("Worldwide" herein) and Sanitec Limited ("Limited" herein). Through a series of
18 transfers and a corporate re-organization by Quinn, Windsor became the sole owner of Worldwide,
19 and Worldwide became the majority owner of Limited (Weinsten owned a minority interest in
20 Worldwide). (Ex. 189, 223) Whoever owns Windsor controls the other two by virtue of this
21 ownership structure.

22

23 This court has been asked to make a finding on a single, narrow question: who owns
24 Windsor? The court is mindful that there are other lawsuits in Ohio, and perhaps elsewhere, which
25 may be impacted by this decision, and that there may be issues between various parties impacted by
26 what the court decides here. This court makes no findings regarding the merits of any other lawsuits
27 or any purported claims that the parties may have against one another or others.

28

1 Plaintiff contends that he is the owner of Windsor by virtue of a transfer from Kaye, the
2 managing member of Windsor. Defendants contend that the Trust is the owner of Windsor.
3 Defendants presented evidence that in June 2002, defendant/cross-complainant Quinn was suffering
4 from a terminal illness and was facing an impending prison term, and therefore set up the Trust with
5 cross-complainant Smith and Weinsten as the trustees, and concurrently therewith transferred all the
6 assets of Windsor to Trust. Therefore, at the time of transfer of Windsor from Kaye to Harkess,
7 defendants assert that Windsor had already been transferred to the Trust and there was nothing to
8 transfer.

9
10 THE TRUST

11 The circumstances in existence in or about June 2002, that is the illness and the impending
12 sentencing, are consistent with a desire by Mr. Quinn to form a trust to hold his property. What is
13 missing, however, is a signed original trust document and any credible evidence that such a
14 document was ever signed by Quinn in June 2002, or at any time before he was released from prison
15 in late September 2003. Also, like the ownership structure that Quinn set up for Windsor, the
16 structure he set up for his Trust was also incomplete. The final, and necessary, steps were never
17 taken to consummate the Trust.

18
19 The court makes the following findings which support its conclusion that no Trust was
20 formed in June 2002 or at any time before the Kaye-Harkess transfer.

- 21
22 1. The court found Smith to be a credible witness, but by his own testimony and that of others,
23 he was only a figurehead. It was Weinsten that wrote all the letters for him to sign, and it
24 was Weinsten that monitored the litigation in Ohio. Virtually everything that Smith knew,
25 he knew because Weinsten told him. He had virtually no firsthand knowledge of facts.
26
27 2. There is no original Trust signed by Quinn which bears a date in June 2002. In fact, no
28 signed original at all was offered in evidence.

1 3. While there is evidence that the Litwin law firm prepared drafts of a trust in June 2002, and
2 Smith signed some version of a trust, Smith testified that he does not know whether Quinn
3 signed it. (Ex. 265)

4
5 4. Weinsten testified that he sent the Trust document which had been signed by others to Quinn
6 for him to sign. He had no knowledge whether Quinn signed it or not. No one had personal
7 knowledge about whether Quinn ever signed before he was released.

8
9 5. Quinn testified that he did sign it in June 2002, but the court does not find his testimony to
10 be credible. On the stand Mr. Quinn repeatedly shifted responsibility for various actions
11 from himself to his attorneys, and said he would sign virtually anything his lawyers told him
12 to sign. This, along with his observed demeanor while testifying, and his two felony
13 convictions for fraud-related offenses, cause the court to disregard his testimony. Thus, there
14 is no independent, corroborating evidence that Quinn ever signed before he got out of prison.

15
16 6. There is no credible evidence that shares or other indicia of ownership of Windsor were ever
17 transferred to the Trust.

18
19 7. Quinn testified that he fired Kaye as managing member of Windsor in June 2002 by letter,
20 but there is no evidence other than the testimony of Quinn himself that the letter was ever
21 sent, and court does not find his testimony credible. Kaye denies ever receiving it, and the
22 only copy introduced in evidence apparently came from Weinsten's file.

23
24 In addition to these points, Weinsten who along with Smith was a co-trustee, denied twice
25 in depositions in other cases that he knew who owned Windsor. One can infer from this that he
26 either knew the trust had never been signed by Quinn, or that there was never any transfer of
27 Windsor assets to the Trust. It was Weinsten who was monitoring the Ohio litigation and apparently
28 was concerned enough about protecting his 48% interest in Worldwide that he attempted to intervene

1 in the Ohio litigation. In several pleadings filed in connection therewith he never mentioned the
2 Trust. (Ex. 118, 122) Even when Smith sent the letter to John Climaco, Ohio counsel for Limited,
3 et al., he did not mention the Trust. And finally, the two independent witnesses who may have been
4 able to corroborate the Trust, attorney Litwin who drafted it, and attorney Mark Geragos (who was
5 allegedly present when the Trust was signed in his office) were not called by the defendants to
6 testify.

7
8 The defendants have not met their burden of showing that the Trust was legally formed and
9 in existence at the time of the Kaye-Harkess transfer.

10 11 THE TRANSFER TO HARKESS

12 By virtue of the failure of the Trust to be formed in June 2002, the assets of Windsor were
13 still in Windsor at the time of the transfer from Kaye to Harkess. In July 2003, never referencing the
14 Trust in his letter, Smith wrote to John Climaco, Esq., Ohio counsel for Limited and Windsor
15 ("Climaco" herein), claiming that Harkess had no authority to represent Limited in the Ohio
16 litigation and that he (Climaco) was discharged as counsel. (Apparently this was one of the letters
17 written for him by Weinsten.) (Ex. 210) In response to this letter Climaco sent an urgent message
18 to Babos demanding to know who had authority to speak for Limited and who he should listen to.
19 (Ex. 211.1, 212) He was obviously very agitated and wanted answers immediately. He was
20 particularly upset over the fact that he was being put in a position to embarrass himself before a
21 federal judge. In response to that inquiry, within hours Babos, with the concurrence of Harkess and
22 Kaye, created back-dated documents that showed that Harkess was the owner of Limited. (Ex. 168)
23 Kaye (for Limited) and Harkess (for Sanitec West) had been managing the Ohio litigation and they
24 needed to show they had authority to do so. (It is not altogether clear which parties Babos was
25 actually representing as counsel in all these transactions; Climaco had repeatedly asserted that Quinn
26 needed separate counsel due to a perceived conflict of interest; Babos had served as corporate
27 counsel for some of the Sanitec companies and Quinn individually over the years.) (Ex. 212) These
28 hastily created documents showed that Kaye, acting as managing member and owner of Windsor,

1 transferred his member/owner status to Harkess. Babos continued to reaffirm that Harkess was the
2 owner of Windsor for weeks after Quinn was released from prison in September 2003. He testified
3 that it was only later he realized that he had made a mistake in having the documents prepared and
4 started making efforts to reverse position. By then, however, the representations to the Ohio federal
5 court and counsel had already been made and actions had been taken in reliance on Harkess'
6 apparent authority to represent Limited, (based on his ownership of Windsor) and commitments had
7 been made and documents signed.

8
9 Quinn is responsible for creating the environment and business structure that made this
10 possible. Originally Quinn had a registration for Windsor filed with the Secretary of State showing
11 Kaye as the manager. This was the only documentation for Windsor. Nowhere did Quinn's name
12 appear. He then asked Kaye to front for him in an attempt to sell Limited and in fact Kaye acted as
13 managing member/owner in the Eden transaction and in dealing with Stericycle. He also was sent
14 by Quinn to Limited back East to monitor operations and represent himself as the managing member
15 of Windsor. Quinn claims that Kaye was only appointed to deal with specific sales or activities, but
16 Quinn is the one who put him in a position to represent himself as owner of Windsor. It was Quinn
17 who set up Windsor but never set up any formal ownership structure or had any documents prepared
18 which identified him as being involved in Windsor. All of the assets that went through the various
19 re-organizations ended up in Windsor. Windsor became a holding company with no ownership
20 structure, and no connection with Quinn. When it was to his advantage in having Kaye step
21 forward for specified transactions that benefitted Quinn, he validates his authority. The court does
22 not recognize, however, such selective delegations of authority, especially in a case where there is
23 no documentation showing an owner of Windsor at all. Mr. Babos and Mr. Mitchell R. Miller (a
24 corporation lawyer who drew up the Windsor documents for the Secretary of State) both testified
25 that Quinn never set up any ownership structure because he wasn't sure how he wanted to do it. The
26 only person placed in a position of apparent authority/ownership was Kaye. There is no evidence
27 that either Quinn, or Babos or Miller did anything at all to remedy this uncompleted ownership
28 structure after Quinn went to prison, thus enabling the later events to occur.

1 When the Climaco emergency came, Mr. Kaye did not step forward to act as owner/ manager,
2 rather he wanted out, so it was agreed that he would transfer his member/owner status to Harkess.
3 Rather than explain the dilemma to Mr. Climaco and seek a resolution with the Ohio court, counsel
4 Babos, with the concurrence of Harkess and Kaye prepared the back-dated documents within a
5 matter of hours and sent them to Climaco. Those documents were sent to Ohio with the knowledge
6 that they were to be presented by Mr. Climaco, an officer of the court, to a federal judge representing
7 that Mr. Harkess was the owner of Windsor. And then everyone sat back and allowed others to rely
8 on that representation. This court finds that Mr. Harkess is the owner of Windsor. That entire chain
9 of events was created by the anonymous and incomplete creation of Windsor by Quinn, and the
10 attempt to selectively assign ownership/authority to Kaye.

11
12 The court is mindful that defendant contends that there was an agreement that Harkess was
13 only taking the shares of Windsor temporarily and that he was to give them back after Quinn was
14 released. Mr. Babos supports this purported agreement, as does Quinn, but Harkess vehemently
15 denies it. There is evidence that Harkess said "If I own Limited by virtue of my ownership of
16 Windsor, then I want the documents." This would suggest, however, that Harkess did indeed believe
17 he owned Windsor although had some question as to what impact it had on ownership of Limited.
18 Whether there was or was not such a private agreement between Quinn and Harkess is between
19 them. As far as the rest of the world is concerned, Mr. Kaye transferred ownership of Windsor to
20 Harkess and Harkess, Kaye and Babos represented to the federal court and the litigants that Harkess
21 was the owner of Windsor. The transfer to Harkess was effective.

22 23 UNCLEAN HANDS AND EQUITABLE ESTOPPEL

24 Further, in the exercise of its equitable powers, this court will not permit Quinn to now assert
25 an ownership interest in Windsor. Plaintiff spent a great deal of the trial laying out the series of
26 transactions involving the original purchase of Limited by Quinn with investor money and the use
27 of various corporations to do so. Plaintiff made the point that Mr. Quinn's name personally did not
28 appear on any of the documentation of these companies. For the most part the court found that to

1 be true, based on the limited evidence presented on those issues. This court is being asked to take
2 note of a pattern of ownership and apparent evasion of accountability to creditors and suppression
3 of identity in order to establish the defense of unclean hands. This court is not making any findings
4 as to whether Mr. Quinn defrauded the original investors. This court does take note, however, of this
5 trail of companies, re-organizations and the resultant anonymity of Quinn. The court also takes note
6 of the fact that Quinn never used any of his own money to purchase these companies. The court did
7 not find credible his testimony that he also put his own money into Limited from the sale of luxury
8 cars. No documentary or other evidence was presented to support that assertion.

9
10 All of this is corroboration for the testimony of Mr. Quinn himself. Quinn testified on the
11 stand that he created Windsor to "keep the assets of Sanitec away from Barbara Sager, Steve Ventre,
12 Joe Delloiacovo and the investors in Ohio that were laying claim to those assets." He further
13 testified that he asked Mr. Kaye to be the managing member because he was "having difficulties"
14 and "troubles" at the time. It is clear that Quinn did not want his assets in his own name and in fact
15 he also put his 80% interest in Sanitec West in the name of his friend Mary Reidiger rather than
16 himself. This is sufficient evidence for the court to conclude that Quinn was secreting his assets to
17 defeat the claims of his creditors and that he comes to this court with unclean hands. (*See Allstead*
18 *vs. Laumeister* (1911) 16 Cal.App. 59 and *Belling vs. Croter* (1943) 57 Cal.App.2d 296.)

19
20 In addition, the court invokes the doctrine of equitable estoppel. While Mr. Quinn himself
21 did not make the representations to those who relied and acted on them (the Ohio federal court and
22 counsel and others related to that litigation), he is directly responsible for setting in motion the chain
23 of events that led to those representations. He put Kaye and Harkess in the position of having
24 apparent authority for and ownership of, Windsor from the point of view of the court and the parties
25 in the East, to accomplish his own ends of selling off Limited without having his name in any way
26 associated with the sale. Many have relied on the resulting representations about Harkess' ownership
27 of Windsor to their potential detriment in the event that transactions consummated in reliance
28 thereon were to be overturned. Quinn is estopped from now claiming that the representations

1 regarding ownership of Windsor are false, or that Kaye did not have authority to transfer the
2 company to Harkess.

3

4 Plaintiff/Cross-Defendant Harkess to prepare the judgment consistent with this Tentative
5 Ruling. This Tentative Ruling shall be the Statement of Decision unless within ten days either party
6 specifies controverted issues or makes proposals not covered in the Tentative Ruling.

7

8 Dated: 7/11/05

9

JAMES R. DUNN

10

JAMES R. DUNN
Judge of the Superior Court

11

12

13

14

15

EP: 7/11/05
HARKESS.ten

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EXHIBIT 19

1 Mark M. Hathaway, Inc.

2 A PROFESSIONAL LAW CORPORATION
3 801 S. FIGUEROA STREET, 11TH FLOOR
4 LOS ANGELES, CALIFORNIA 90017

5 TELEPHONE: (213) 624-7200

6 FACSIMILE: (213) 624-7220

7 MARK M. HATHAWAY SBN 151332
8 Attorney for WINDSOR TRUST and
9 TERRANCE QUATKEMEYER

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

13 JAMES HARKESS,

14 Plaintiff,

15 v.

16 TERRANCE QUINN, WINDSOR TRUST,
17 u/d/t dated June 21, 2002, and DOES 1-10,
18 inclusive,

19 Defendants.

Case No. BC311681

DEFENDANTS' OBJECTIONS
TO COURT'S PROPOSED
STATEMENT OF DECISION AND
PROPOSALS

[C.C.P. 632; CRC 232]

Judge: Hon. James R. Dunn
Dept: 26

20 AND RELATED CROSS-ACTION.

21 Come now Defendants THE WINDSOR TRUST u/d/t, dated June 21, 2002, and
22 TERRANCE QUINN, who submit their objections and proposals to the Court's Tentative
23 Ruling and Proposed Statement of Decision as follows:

24 Under California law a court's statement of decision should pertain to "principal"
25 issues which are relevant and essential to the judgment, and closely and directly related to
26 the trial court's determination of the ultimate issues in the case. See *Kuffel v. Seaside Oil*
27 *Co.* (1977) 69 C.A. 3d 555. Findings are not required on every "subsidiary" matter on
28 which evidence is received at trial, even though the subsidiary matter may be relevant to

1 the ultimate issues of fact. *Kuffel* at p. 565.

2 As the Court has noted in its Tentative Ruling and throughout the trial itself, this
3 case involves many issues that pertain to, or may have a significant impact upon, claims by
4 other parties and other cases pending in other courts. Accordingly, this case deserves even
5 greater scrutiny in setting forth the Court's findings and determinations.

7 OBJECTIONS:

8 Defendants object to any principal issue findings by the Court other than the
9 following:

10 A. Its finding that no valid trust entity was created by Quinn.

11 Notwithstanding this finding by the Court, Defendants do not believe any evidence
12 supported a determination that "like the ownership structure that Quinn set up for Windsor;
13 the structure he set up for his trust was also incomplete. The final and necessary steps were
14 never taken to consummate the Trust." (See page 3, lines 15-17 of Tentative Ruling). Mr.
15 Babos testified having received a fully executed copy of the Trust sometime in July of
16 2003, well before Mr. Quinn returned home. Mr. Weinstein and Mr. Smith testified that
17 they signed the trust after seeing that Mr. Quinn had signed it on or about June 21, 2002.
18 This corroboration by these witnesses as to the existence of a fully executed Trust
19 document was all well before Mr. Quinn returned home in September of 2003. Mr. Miller
20 further testified as to the legal effect and validity of the Trust document itself.

21 B. Its finding that Kaye had the legal authority to transfer the ownership of 22 Windsor to Harkess.

23 Notwithstanding this finding by the Court, Defendants seek clarification as to
24 whether the court finds that Kaye was given authority to act only as the *manager* of
25 Windsor Holdings, or was he given authority to act as *managing member* whereby he was
26 given ownership of the company at the time Mr. Quinn asked Kaye to act on his behalf.
27 Testimony by witnesses for both parties, including that of Mr. Kaye, seem to concur that
28 Kaye was asked to act rather as a manager only, and that it was not intended that he receive

1 any ownership interest from Mr. Quinn at the time he requested Kaye to act on his behalf.

2 Defendants further maintain that Mr. Quinn did not try and hide assets to defeat the
3 claims of his creditors, but that he knowingly and intentionally chose the trustees of his
4 Trust to manage and control his original interest in Sanitec, including the satisfaction of
5 any and all creditors of Sanitec, Ltd. By establishing a Trust back in June of 2002, he
6 chose his trustees to accomplish these objectives rather than the likes of Kaye or Harkess.
7 Instead of completing the corporate formalities of Windsor Holdings, LLC, Mr. Quinn
8 created the Trust entity as a bona fide substitute. This Court states it "is not making any
9 findings as to whether Mr. Quinn defrauded the original investors." (P. 8, lines 3-4 of
10 Tentative Ruling). But, then the Court goes on to state in lines 16-17, "This is sufficient
11 evidence for the court to conclude that Quinn was secreting his assets to defeat the claims
12 of his creditors and that he comes to this court with unclean hands." Defendants seek
13 clarification here as this seems to be an ambiguous and inconsistent finding by the Court.

14 C. Its finding that James Harkess is the rightful owner of Windsor Holdings,
15 LLC.

16 Notwithstanding this finding, Defendants seek clarification as to the Court's
17 finding, if any, as to when, specifically, Windsor Holdings legally came into existence –
18 what specific date or time frame. Was it (a) at the time that Mr. Miller merely filed
19 Articles of Organization with the Secretary of State in July of 2001, or (b) at the time
20 Harkess, Kaye and Babos created back dated documents, which included the company's
21 initial operating agreement, organizational minutes, issuance of stock, and statement of
22 information – all done in July of 2003.

23 The Court notes in its own Tentative Ruling that it has been asked to make a finding
24 on a single, narrow question: who owns Windsor? The Court is careful to acknowledge
25 and further states: "... that there are other lawsuits in Ohio, and perhaps elsewhere,
26 which may be impacted by this decision, and that there may be issues between various
27 parties impacted by what the court decides here. This court makes no findings regarding
28 the merits of any other lawsuits or any purported claims that the parties may have against

1 one another or others." (See page 2, lines 23-27 of Tentative Ruling). Accordingly,
 2 Defendants maintain that the ultimate principal findings in this case, including any factual
 3 or legal basis supporting such findings, and any clarifications thereto, should be limited to
 4 those three (3) issues set forth in A through C above.

5
 6 The Court's Statement of Decision should not include any of the following:

7 A. Any finding as to who owns Sanitec Worldwide, Ltd.

8 The ownership issue of Sanitec Worldwide is one of several issues that will further
 9 be contested in the related case of *Sanitec Worldwide, Ltd. v. Harkess, et al.* Case No.
 10 BC330528 presently before this Court as a *related* case. A finding by this Court at this
 11 time may impact the determinations to be made in that case. However, should the Court
 12 choose to make any finding that Windsor Holdings is the majority 51% shareholder of
 13 Sanitec Worldwide, the Court should also make a further finding that Salem Associates,
 14 Inc. is the minority 49% shareholder. This evidence was put before the Court and was
 15 undisputed by the parties. Defendants believe that the Court should then also make a
 16 further finding that establishes the date or time frame that these ownership interests took
 17 effect.

18 B. Any finding as to who owns Sanitec, Ltd.

19 C. Any finding as to who owns A.B.B. Sanitec, West.

20 This issue is presently being litigated in a pending case entitled *Riedinger v.*
 21 *Harkess, et al.* Case No. BC322202 pending before the Honorable Alice E. Altoon in
 22 Department 28 of this Court.

23 D. Any finding that Windsor Holdings, LLC ever held or owned any specific
 24 assets.

25 This issue, including the assets rightfully belonging to any of the other Sanitec
 26 companies, are being litigated in the related Ohio federal court action entitled *Sanitec West*
 27 *et al. v. Delloiacovo et al.* USDC Case No. 1:02-cv-01582-DCN, and the *Riedinger v.*
 28 *Harkess and Sanitec Worldwide, Ltd. v. Harkess* actions, *supra*.


1 While there was evidence presented as to the structure and chain of title of several
2 of the Sanitec companies, these were primarily submitted to aid the court in understanding
3 the history of these companies. They were not "principal" issues in the case, and neither
4 party sought declaratory relief as to the legal ownership of any company other than
5 Windsor Holdings.

6 The above five (5) issues were subsidiary issues to the declaratory relief claims in
7 this case, and were not fully tried before this Court. Defendants maintain that such issues,
8 in addition to others, are also pending between these very same parties, as well as other
9 third parties, in related but separate actions pending before this Court as well as in Ohio.
10 Any finding as to such issues were beyond the scope and adjudication for this Court, and
11 may very well prove to be prejudicial to Defendants and such other third parties.

12
13 PROPOSALS:

14 Defendants request that their counsel be permitted to submit an amended proposed
15 statement of decision consistent with the above for the Court's consideration and approval.
16 Defendants further request an opportunity for oral argument to be scheduled in this matter
17 pursuant to CRC 232(f).

18
19
20 Dated: July 21, 2005


21 MARK M. HATHAWAY
22 Attorney for WINDSOR TRUST and TERRANCE
23 QUATKEMEYER
24
25
26
27
28

1 } PROOF OF SERVICE

2 STATE OF CALIFORNIA

3 COUNTY OF LOS ANGELES } ss.

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 801 S. Figueroa St. 11th Floor, Los Angeles, California 90017.

5 On July 21, 2005 I served the foregoing document, described as DEFENDANTS' OBJECTIONS TO COURT'S PROPOSED
6 STATEMENT OF DECISION AND PROPOSALS on all interested parties listed below by transmitting to all interested parties a true copy thereof as follows:

7 Michael J. Hartley, Esq.
8 Weston Benshoof Rochefort Rubalcava & MacQuish LLP.
9 333 S. Hope Street 16th Floor
10 Los Angeles, CA 90071-1406
11 Telephone: 213-576-1000
12 Facsimile: 213-576-1100
13 E-mail: mhartley@wbcounsel.com

14 ☐ BY FACSIMILE TRANSMISSION from FAX No. (626) 795-1616 to the fax numbers set forth above.

15 ☐ The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2005(j), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

16 ☐ BY EXPRESS SERVICE: I caused such document to be deposited in a box or other facility regularly maintained by the express service carrier or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person on whom it is to be served.

17 ☒ BY MAIL as follows:

18 ☐ placing a true copy thereof in a sealed envelope addressed as stated on the ATTACHED MAILING LIST.

19 ☒ placing ☐ the original ☒ a true copy thereof enclosed in a sealed envelope addressed as set forth above.

20 ☐ I deposited such envelope in the mail at Pasadena, California. The envelope was mailed with postage thereon fully prepaid.

21 ☒ I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

22 ☐ BY PERSONAL SERVICE as follows: I delivered such envelope by hand to the offices of the addressee.

23 ☐ FEDERAL - I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

24 ☒ STATE - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

25 Executed on July 21, 2005 at Los Angeles, California.

26 Jenny Hsu